

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-13555 (JMP)

4 Case No. 08-01420 (JMP)(SIPA)

5 Adv. Case No. 09-01032

6 - - - - - x

7 In the Matter of:

8

9 LEHMAN BROTHERS HOLDINGS, INC., et al.

10

11 Debtors.

12 - - - - - x

13 In the Matter of:

14

15 LEHMAN BROTHERS, INC.,

16

17 Debtor.

18 - - - - - x

19 In the Matter of:

20 LBSF,

21 Plaintiff,

22 v.

23 BALLYROCK ABD CDO 2007-1 Limited, et al.,

24 Defendants.

25 - - - - - x

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U.S. Bankruptcy Court
One Bowling Green
New York, New York

August 21, 2013
10:10 AM

B E F O R E :
HON JAMES M. PECK
U.S. BANKRUPTCY JUDGE

1 Hearing re: Motion for Approval of Partial Settlement
2 Agreements Relating to Certain Credit Default Swap
3 Agreements and Indentures [ECF No. 38757]
4

5 Hearing re: LBSF v. Ballyrock ABD CDO 2007-1 Limited and
6 Wells Fargo Bank, N.A., Trustee [Case No. 09-01032], Motion
7 to Compel Barclays Bank, PLC, Long Island International
8 Limited for the Production of Documents
9

10 Hearing re: Motion of Fidelity National Title Insurance
11 Company to Compel Compliance with Requirements of Title
12 Insurance Policies [ECF No. 11513]
13

14 Hearing re: Motion of Giants Stadium LLC for Leave to
15 Conduct Discovery of LBI Pursuant to Federal Rule of
16 Bankruptcy Procedure 2004 [ECF No. 36874]
17

18 Hearing re: Motion of RBC Dominion Securities Inc. to Compel
19 Lehman Brothers Holdings, Inc. to Reissue Checks for Allowed
20 Claim [ECF No. 39062]
21

22 Hearing re: Motion of FirstBank Puerto Rico for (1)
23 Reconsideration, Pursuant to Section 502(j) of the
24 Bankruptcy Code and Bankruptcy Rule 9024, of the SIPA
25 Trustee's Denial of FirstBank's Customer Claim, and (2)

1 Limited Intervention, Pursuant to Bankruptcy Rule 7024 and
2 Local Bankruptcy Rule 9014-1, in the Contested Matter
3 Concerning the Trustee's Determination of Certain Claims of
4 Lehman Brothers Holdings, Inc. and Certain of Its Affiliates
5 [LBI ECF No. 5197]

6
7 Hearing re: Trustee's Eighty-Second Omnibus Objection to
8 General Creditor Claims (No Liability Claims) [LBI ECF No.
9 6373]

10
11 Hearing re: Trustee's Eighty-Fifth Omnibus Objection to
12 General Creditor Claims (Amended and Superseded Claims) [LBI
13 ECF No. 6426]

14
15 Hearing re: Trustee's Eighty-Seventh Omnibus Objection to
16 General Creditor Claims (No Liability Claims) [LBI ECF No.
17 6556]

18
19 Hearing re: Trustee's Eighty-Eighth Omnibus Objection to
20 General Creditor Claims (No Liability Claims) [LBI ECF No.
21 6566]

22
23 Hearing re: Trustee's Ninety-Fifth Omnibus Objection to
24 General Creditor Claims (No Liability Claims) [LBI ECF No.
25 6682]

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Hearing re: Trustee's Ninety-Seventy Omnibus Objection to
General Creditor Claims (No Liability Claims) {LBI ECF No.
6684]

Hearing re: Trustee's Ninety-Eighth Omnibus Objection to
General Creditor Claims (No Liability Claims) [LBI ECF No.
6699]

Hearing re: Trustee's Objection to General Creditor Proof
of Claim of Riverside Holdings, L.L.P. (Claim No. 9004770)
[LBI ECF No. 6389]

Hearing re: Trustee's One Hundred First Omnibus Objection
to General Creditor Claims (Employee Equity Claims) [LBI ECF
No. 6728]

Transcribed by: Pamela A. Skaw

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8
9 ALSO APPEARING:

10 H.D. CHRISTIAN (TELEPHONIC)

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P R O C E E D I N G S

THE COURT: All right. Be seated, please.

MS. ARTHUR: Good morning.

THE COURT: Good morning.

MS. ARTHUR: Good morning, Your Honor. For the record, Candace Arthur of Weil, Gotshal & Manges on behalf of Lehman Brothers Holdings Inc. as plan administrator.

Your Honor, as reflected on the agenda, the first matter before the Court today is the plan administrator's motion on behalf of itself and Lehman Brothers Special Financing, Inc., which I'll refer to LBSF moving forward, seeking approval of five partial settlement agreements.

Each of the agreements, in and of themselves, resolve disputes relating to credit default swap transactions.

Your Honor, before discussing the substance of the relief requested in the motion, I would like to note for the Court that although the agenda lists the motion under contested matters, it is the plan administrator's position that the objecting noteholder, Canyon Value Realization Fund LP is essentially opting out of one of the five settlement agreements and is not objecting to the relief requested in the motion.

Effectively, the motion before the Court today is actually uncontested and the noteholder is specifically

1 requesting to be carved out of the Axim (ph) Ridge CBO 2007-
2 1 settlement agreement, pursuant to the terms provided in
3 the agreement for those noteholders that are objecting to
4 the terms of the settlement.

5 By way of background, Your Honor, each settlement
6 agreement is among LBHI, LBSF, the U.S. Bank National
7 Association, solely in its capacity as Trustee under certain
8 indentures, and the various entities referenced in the
9 motion as either issuer or a co-issuer.

10 Each settlement agreement will allow LBSF to
11 capture a substantial amount of the value of these
12 transaction and the notes that it owns for its estate.

13 Given that we have come before the Court to seek
14 approval of very similar settlement agreements, I realize
15 that the Court is familiar with the terms of the agreements
16 themselves, but to just briefly highlight the salient
17 points.

18 The issuer and the trustee shall redeem or
19 otherwise liquidate the collateral held in their position
20 and deposit the net proceeds for later distribution in
21 accordance with order priority and procedures set forth in
22 the respective settlement agreements. The proceeds are to
23 be used to satisfy any outstanding fees and expenses of the
24 trustee to pay each noteholder, other than LBSF, that does
25 not object to the settlement, an amount specified in the

1 agreement in full satisfaction of their claims. Create an
2 interest bearing account in a set amount reserved for
3 certain of the trustee's fees and expenses. Create an
4 escrow amount securing payment of the claims of any
5 objecting noteholder and, subject to certain conditions, to
6 pay the remaining amount of proceeds to LBSF.

7 Of the notes that LBSF does not hold, it agrees
8 that it will not assert it is entitled to be paid on a
9 senior or power to sue basis with such notes. LBSF has,
10 however, reserved its right to assert that it is entitled to
11 be paid certain amounts owed under the notes that it owns on
12 a junior basis, to those notes it does not own, in a certain
13 amount.

14 Although the terms of each settlement agreement
15 are virtually identical, each agreement is separate from the
16 other and the amounts that are placed in the reserve or
17 escrow accounts will be separate for each of the five
18 transactions and the conditions to effect (indiscernible -
19 00:03:18) agreements, may actually vary as well.

20 Your Honor, it is the plan administrator's
21 position that each of the settlement agreements were entered
22 into in good faith and negotiated at arm's length.
23 Additionally, we believe that each of the five agreements
24 are fair and equitable, well within the range of
25 reasonableness and are in the best interests of LBSF's

1 estate and its creditors.

2 Unless the Court has any questions, the debtors
3 respectfully request entry of an order approving the motion.

4 THE COURT: My principal question probably can't
5 be answered on the public record and may require a chambers
6 conference.

7 The motions, the supporting papers, the
8 declarations, even the positions filed by U.S. Bank National
9 Association in support of all of their efforts to notify
10 noteholders are opaque as it relates to the economics of the
11 transaction and the benefits to the estate.

12 And so even though you characterize this as
13 uncontested, I don't have any information concerning the
14 actual benefit to the estate associated with the proposed
15 settlements. I'm perfectly prepared to approve them but
16 will need some more information.

17 In the past, unredacted copies of settlement
18 agreements have been furnished to chambers. We couldn't
19 find such materials. I don't know if they were delivered or
20 not, but they weren't brought to my attention. And so I'm
21 going to need to speak with representatives of both the
22 debtors and U.S. Bank, if U.S. Bank wishes to participate,
23 so that I'm provided with the information I need to better
24 understand what's going on here.

25 MS. ARTHUR: We understand. I do have extra

1 copies of the settlement agreements. We provided the United
2 States Trustee, counsel for the creditors committee, and
3 chambers copies of the settlement agreements on August 14th.
4 However, I do agree that, to the extent that Your Honor
5 doesn't have the economics, that it would probably be in the
6 best interests for us to meet and discuss it and provide you
7 with a copy to review as well.

8 THE COURT: Okay. My suggestion then and I'll
9 hear from counsel for U.S. Bank in the moment. I see that
10 he's standing. My suggestion is that we complete the public
11 portion of the hearing, including the status conference with
12 respect to Ballyrock, and then simply go off the record and
13 clear the courtroom to the extent appropriate so that I can
14 then be advised as to what's going on with regard to this
15 motion for partial settlement.

16 And there'll be no need for further on the record
17 presentations. I treat the papers as supporting approval.
18 I simply need to know more so that I can confirm that I'm
19 going to enter an order approving this.

20 MS. ARTHUR: Thank you, Your Honor.

21 (Pause)

22 MR. TOP: Your Honor, Frank Top on behalf of U.S.
23 Bank National Association as trustee for five of these cash
24 hybrid transactions that are before this Court today.

25 In fact, these settlements will fully resolve

1 three, if not four, of the transactions entirely. So, while
2 it's been characterized as partial, that was to enable
3 noteholders to opt out of the settlement if they so chose --
4 choose to do so. While we heard from a number of
5 noteholders with respect to the resolution, only one
6 noteholder advised the trustee that they had an objection
7 and that was the Axim 2007-1 transaction.

8 I subsequently learned that he may have another
9 position in another one of these transactions. He only
10 directed us to file an objection on one. I'm not sure
11 whether he even has that position or whether he intended to
12 object with respect to the other ones. That's another thing
13 that I would like to determine.

14 But that doesn't affect the (indiscernible -
15 00:07:47) or anything like that. At worst, all they'd
16 become is an objecting noteholder and it's governed by the
17 terms of the settlement agreement and reserves are going to
18 be held with respect to all objecting noteholders. That's
19 if they ultimately prevail in the litigation, they would be
20 paid their principal and interest, in full.

21 THE COURT: Your objection on behalf of the
22 noteholder does not provide any grounds for the objection.
23 It simply states that there is an objection. I -- are you
24 aware of any grounds for the objection?

25 MR. TOP: The only ground for the objection is

1 that they were not happy with the settlement amount, which
2 is their prerogative. They don't have to accept the amount.
3 They can choose not to accept it and they just become an
4 objecting noteholder and are subject to mediation,
5 litigation or whatever.

6 THE COURT: Okay. And -- I won't ask more
7 questions about it. That's fine. Thank you.

8 MR. TOP: Thank you, Your Honor.

9 THE COURT: So is there anyone else who wishes to
10 be heard with regard to this motion for approval of a
11 partial settlement?

12 (Pause)

13 THE COURT: I'm going to treat the record as
14 closed with the understanding that certain information
15 relating to the economics of the settlement will be provided
16 to me privately, consistent with the confidential nature of
17 various aspects of the settlement.

18 But unless I hear something that would cause me to
19 question the business judgment of the debtors in entering
20 into these arrangements, for record purposes, these are all
21 going to be approved and I will enter an order subject to my
22 being provided with the information off the record.

23 We can move on to the next matter.

24 (Pause)

25 MR. SLACK: Good morning, Your Honor.

1 Richard Slack from Weil, Gotshal for the debtors.

2 The next matter, as Your Honor pointed out, is the
3 Ballyrock status conference. You had asked the parties to
4 get together and discuss two things. One is whether the
5 action overall can be settled and the second is whether
6 there is a way of resolving the privilege motion that had
7 been brought.

8 The parties have done both and I can talk to both
9 of those. So, with respect to the settlement piece, at Your
10 Honor's urging the parties have met and have actually had
11 very productive settlement discussions that are ongoing.

12 THE COURT: Good.

13 MR. SLACK: With respect to the privilege motion,
14 we've also had simultaneous discussions and there have been
15 a number of creative proposals that have been exchanged and
16 the parties are working through those. I'm optimistic that
17 we can and will reach an agreement on it. But we haven't
18 yet.

19 THE COURT: When you say you're optimistic that
20 you can reach an agreement on it --

21 MR. SLACK: On the --

22 THE COURT: -- do you mean to say that there may
23 be a consensual resolution of all of the issues that were
24 briefed and argued or are you saying that you're optimistic
25 that the issues before the Court will be, in some fashion,

1 streamlined or limited?

2 MR. SLACK: I believe that if the proposals we're
3 talking about now get agreed to in some fashion that they
4 will resolve the motion entirely at this point.

5 THE COURT: Great.

6 MR. SLACK: So -- and I really don't want to go
7 through the discussions. Obviously, there might be some
8 things that are deferred but I think the motion would be
9 withdrawn is my understanding as to how our discussions are
10 going right now.

11 THE COURT: Okay. I'll give Mr. Lacy an
12 opportunity to comment, if he wishes to. But I'm interested
13 just for docket control purposes and understanding what the
14 likely timing is both with respect to a comprehensive
15 resolution to the extent that's feasible and this more
16 narrow question involving discovery.

17 MR. SLACK: I'm not sure that it's something that
18 I can address in terms of timing, at least as to the overall
19 settlement. The parties are still discussing and having
20 discussions and, as I've said, they've been productive. But
21 I wouldn't venture a guess as to whether they're going to
22 stall or whether they're going to keep moving. I don't
23 really have a crystal ball on that.

24 With respect to the privilege motion, we have
25 presented a proposal, a fairly detailed proposal, recently

1 to counsel for Barclays and Black Rock and, again, I'm
2 optimistic because we've had some prior discussions and we
3 tried to be true to those discussions. So, we'll -- I
4 assume we'll be getting some kind of a response to that in
5 the near future and hopefully it will be a positive one and
6 that can move more quickly.

7 THE COURT: Okay. Thank you.

8 Does anyone else wish to say anything?

9 (Pause)

10 MR. LACY: Your Honor, Robinson Lacy from Sullivan
11 & Cromwell for Barclays Capital and Long Island
12 International.

13 I am in general agreement with everything
14 Mr. Slack has said. I do want to clarify that -- you'll
15 recall that Your Honor's suggestion concerning the motion to
16 compel involved trying to -- I think you said de-mist the
17 issue of the timing of the petitions and you had observed
18 that a certain amount was known and I think you at least
19 understood that a certain amount could be determined by
20 testimony.

21 The discussions we're having concerning the
22 privilege motion would, I think, totally resolve the other
23 branch, which is the motion to compel production of
24 documents concerning the structuring of the transactions,
25 things that happened in 1997.

1 Whether or not it will resolve the branch having
2 to do with the timing depends on what people say. And we
3 don't know what they're going to say yet. So at least some
4 of them are going to be LBSF's witnesses.

5 So I don't -- I'm not quite as optimistic as
6 Mr. Slack that the entire motion would get resolved as a
7 result of these procedures. But they will certainly make --
8 we will certainly accomplish a great deal if we can get this
9 worked out.

10 THE COURT: Accomplish as much as you can.

11 (Pause)

12 MR. CROWELL: Good morning, Your Honor.
13 Nick Crowell from Sidley Austin for Black Rock.

14 I generally agree with what Mr. Slack said as
15 well. We have made progress as far as the global resolution
16 of the case with respect to my client. However, the only
17 thing I will add is that, as far as I know, the negotiations
18 between, at least, my client and Lehman have stalled at this
19 point. So I'm hoping that they will pick back up again.
20 But at this point, they have stalled. So I just wanted to
21 make the Court aware of that.

22 THE COURT: Okay. Before you step away, this is
23 just a general question. I take it that the conversations
24 relating to what we're terming a global resolution are
25 happening directly and that -- do not involve mediation, at

1 the moment?

2 MR. CROWELL: My understanding is they're
3 happening directly between business people from my client
4 and from Lehman. That is correct.

5 THE COURT: Okay. And I'm just going to ask a
6 question more generally for the parties who've been involved
7 in these conversations, as to whether it would be productive
8 to return to mediation or is sufficient progress being made
9 despite the fact that there's a current stall, that the
10 parties believe that they're capable of moving the process
11 forward through their own efforts.

12 MR. CROWELL: I would put that question to
13 Mr. Slack. I hope so, but I would put that question to him.

14 MR. LACY: Your Honor, I'll say that because it's
15 -- because these negotiations are conducted by business
16 people, it tends to be sort of one defendant at a time. So
17 sometimes we don't hear anything and Mr. Crowell's client is
18 talking. Sometimes he doesn't hear anything, and my client
19 is talking.

20 I think this week is my client's time to talk and
21 I think that's probably the sense of stalling that he's
22 getting. But the discussions are, in fact, going on
23 actively with Barclays. I don't think a mediator would be
24 able to contribute anything at this stage.

25 THE COURT: Okay. So --

1 MR. SLACK: I mean, Your Honor, the only thing
2 I --

3 THE COURT: -- everybody's a little bit in the
4 dark it seems.

5 MR. SLACK: No, the only thing I would add is that
6 my understanding is that the negotiations are ongoing with
7 both parties and so I'm surprised to hear that the
8 negotiations have stalled. That's not my understanding
9 coming in. But we had had a global meeting and then, Your
10 Honor, the principals have essentially been talking. And
11 again I think they've been productive.

12 But the lawyers, I assume, are all getting reports
13 but have not been directly involved and so I think that's
14 the -- you know, that's been the process that we've had. I
15 can tell you from the debtors' standpoint that if these were
16 to stall, we would -- we've found mediation to be helpful in
17 many circumstances, as Your Honor knows.

18 What I would say here is that I think, right now,
19 the negotiations are proceeding quicker outside of mediation
20 because in order for us to set a mediation date with our
21 very busy mediators would be sometime in the future. So I
22 wouldn't want to stop in order to do that. And if they do
23 stall, that's something I would certainly be willing to
24 discuss with both parties.

25 MR. LACY: I completely agree with that position.

1 THE COURT: Okay. I only brought up the issue of
2 mediation in part because of the reference to the
3 discussions having stalled and I'm now understanding that it
4 may simply be that the discussions are not entirely visible
5 to counsel.

6 MR. CROWELL: That may be the case, Your Honor.
7 But I think it's more likely what Mr. Lacy said, which is
8 that perhaps it's Barclays week and not my client's week.

9 (Laughter)

10 THE COURT: Okay. And I take no position on
11 whether it's desirable for these conversations to be
12 happening separately as opposed to collectively and I
13 presume that people are acting in a way that fits their
14 respective schedules and their views as to how to deal with
15 these difficult questions as productively as possible from a
16 business perspective. I do not want to intrude on that at
17 all.

18 However, I do wish to have some docket control
19 over this and will ask even now for some guidance as to when
20 you think it would be reasonable for there to be a follow up
21 report concerning progress and status -- 30 days, 45 days,
22 60 days?

23 MR. CROWELL: I would prefer a shorter period of
24 time, say 30 days, at least for my client.

25 MR. SLACK: That's acceptable, Your Honor. We can

1 certainly report back at the next omnibus.

2 MR. LACY: That is also our preference.

3 THE COURT: Okay. Fine.

4 So, why don't we do this? This doesn't need to be
5 on the record if you're still satisfied that you're making
6 good progress. And my recollection is that during the
7 Ballyrock mediation, which took place a number of years ago,
8 we had a process of periodic telephonic status reports. I
9 don't think I'm confusing Ballyrock with another case, but
10 it's possible.

11 Mr. Lacy, do you recall that -- that we --

12 MR. LACY: It wasn't during the mediation. It was
13 during the pendency of the motion to dismiss. But that is
14 correct. We had -- I think every two or three weeks, we
15 were having telephone calls.

16 THE COURT: We had periodic discussions in which
17 we didn't in any way discuss the substance of the
18 negotiations that were ongoing, but I was being provided
19 with information concerning the ongoing discussions and
20 whether or not progress was being made. And maybe we can
21 adopt the same general approach now and have a telephone
22 conference in approximately 30 days that you can arrange
23 directly with my law clerks, at a time that works for
24 everybody. And the timing on this is approximate. It
25 doesn't need to be exactly 30 days. It may turn out to be

1 35 days, or 26 days. It doesn't matter. But that's the
2 general time frame.

3 MR. LACY: Fine. That works.

4 MR. SLACK: Certainly that works.

5 THE COURT: Okay. And then if there's a
6 breakdown, or there's a need for putting anything on the
7 record, we can always schedule that.

8 All right. Thank you very much. I appreciate the
9 update.

10 (Chorus of thank you)

11 THE COURT: And then I'm going to suggest that
12 everybody here who's involved in Ballyrock, other than
13 Mr. Slack, who's certainly welcome to stay, will be excused
14 and then we're going to go off the record and have a
15 conversation about the details of the settlement discussed
16 earlier this morning.

17 (Whereupon these proceedings were concluded at 10:34
18 AM)

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C E R T I F I C A T I O N

I, Pamela A. Skaw, certify that the foregoing transcript is
a true and accurate record of the proceedings.

Pamela A
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